

INTER-AMERICAN CONVENTION AGAINST TERRORISM

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

INTER-AMERICAN CONVENTION AGAINST TERRORISM
("CONVENTION") ADOPTED AT THE THIRTY-SECOND REGULAR
SESSION OF THE GENERAL ASSEMBLY OF THE ORGANIZATION
OF AMERICAN STATES ("OAS") MEETING IN BRIDGETOWN, BAR-
BADOS, AND SIGNED BY THIRTY COUNTRIES, INCLUDING THE
UNITED STATES, ON JUNE 3, 2002



NOVEMBER 12, 2002.—Treaty was read the first time, and together with
the accompanying papers, referred to the Committee on Foreign Rela-
tions and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *November 12, 2002.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith, the Inter-American Convention Against Terrorism, adopted at the Thirty-Second Regular Session of the OAS General Assembly meeting in Bridgetown, Barbados, on June 3, 2002, and opened for signature on that date. At that time it was signed by 30 of the 33 members attending the meeting, including the United States. It has subsequently been signed by another two member states, leaving only two states that have not yet signed. In addition, I transmit herewith, for the information of the Senate, the report of the Department of State.

The negotiation of the Inter-American Convention Against Terrorism (the "Convention") was a direct response to the terrorist attacks on the United States on September 11, 2001. At that time, the OAS was meeting in Lima, Peru, to adopt a Democratic Charter uniting all 34 democracies in the hemisphere. The OAS member states expressed their strong commitment to assist the United States in preventing such incidents from occurring again anywhere in our hemisphere. Within 10 days, the foreign ministers of the OAS member states, meeting in Washington, D.C., endorsed the idea of drafting a regional convention against terrorism. Argentina, Peru, Chile, and Mexico played particularly important roles in the development and negotiation of the Convention.

The Convention will advance important United States Government interests and enhance hemispheric security by improving regional cooperation in the fight against terrorism. The forms of enhanced cooperation include exchanges of information, exchanges of experience and training, technical cooperation, and mutual legal assistance. The convention is consistent with, and builds upon previous counterterrorism instruments and U.N. Security Council Resolution 1373, which mandates certain measures to combat terrorism.

The Convention provides for regional use of a variety of legal tools that have proven effective against terrorism and transnational organized crime in recent years. Since fighting terrorist financing has been identified as an essential part of the fight against terrorism, the Convention addresses crucial financial regulatory, as well as criminal law, aspects. Existing Federal authority is sufficient to discharge the obligations of the United States under this Convention, and therefore no implementing legislation will be required.

In particular, the Convention mandates the establishment of financial intelligence units for the collection, analysis, and dissemi-

nation of terrorist financing information and the establishment and enhancement of channels of communication between law enforcement authorities for secure and rapid exchange of information concerning all aspects of terrorist offenses; the exchange of information to improve border and customs control measures to detect and prevent movement of terrorists and terrorist-related materials; and technical cooperation and training programs.

The Convention also provides measures relating to the denial of refugee or asylum status. In addition, the Convention provides that terrorist acts may not be considered “political” offenses for which extradition or mutual legal assistance requests can be denied, and provides for other mechanisms to facilitate mutual legal assistance in criminal matters.

In sum, the Convention is in the interests of the United States and represents an important step in the fight against terrorism. I therefore recommend that the Senate give prompt and favorable consideration to the Convention, subject to the understanding that are described in the accompanying report of the Department of State, and give its advice and consent to ratification.

GEORGE W. BUSH.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, October 7, 2002.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Inter-American Convention Against Terrorism ("Convention") adopted at the Thirty-Second Regular Session of the General Assembly of the Organization of American States ("OAS") meeting in Bridgetown, Barbados, and signed by thirty countries, including the United States, on June 3, 2002. It has been signed by two additional countries since that date. The Convention will enter into force on the thirtieth day following the date of deposit of the sixth instrument of ratification.

Introduction

The Convention reflects the rapid response of the Western Hemisphere to the September 11, 2001 attacks on the United States, as well as the outstanding solidarity among the other member states of the Hemisphere with the United States and the global coalition against terrorism.

The purpose of the Convention is to promote the prevention, punishment, and elimination of terrorism. The States Parties agree to adopt specified measures and to strengthen cooperation among themselves in furtherance of that purpose. The Convention will advance important U.S. Government interests and enhance hemispheric security by improving regional cooperation in the fight against terrorism. The forms of enhanced cooperation include exchanges of information, exchanges of experience and training, technical cooperation, and mutual legal assistance. Existing federal authority is sufficient to discharge the obligations of the United States under this Convention, and therefore no implementing legislation will be required.

Background Information

The Inter-American Convention Against Terrorism was negotiated pursuant to a mandate adopted at the Organization of American States (OAS) Foreign Ministers' meeting of consultation of September 21, 2001. The negotiations were a direct response to the attacks on the United States of September 11.

The OAS, which was meeting in Lima, Peru, on September 11, 2001, to adopt the Inter-American Democratic Charter, was the first international organization to condemn the terrorist attacks on the United States. The organization expressed its strong commitment to assist the United States in preventing such incidents from

occurring again anywhere in the Hemisphere. This was followed by many expressions of support from leaders of the OAS member states.

Immediately upon returning to Washington, the OAS Permanent Council began to discuss ways to demonstrate regional solidarity, to enhance cooperation in the fight against terrorism, and to take concrete steps to assist the United States. This led to the September 21 meeting of OAS Foreign Ministers, who instructed the OAS to take a number of additional measures, including drafting the Convention and revitalizing the work of the Inter-American Committee Against Terrorism (CICTE) to develop practical measures that could be implemented on an urgent basis.

Prior to the beginning of the negotiations, the UN Security Council adopted resolution 1373 (September 28, 2001), which calls upon states to “work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions relating to terrorism,” and “complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism.”

Three negotiating rounds were held, all at the OAS Headquarters in Washington: November 26–28, 2001; January 22–25, 2002; and March 18–21, 2002. Almost all of the thirty-four member states of the OAS participated in one or more of these rounds and in the inter-sessional discussions.

Essential Elements of the Convention

The Convention is designed to build upon the multilateral and bilateral instruments already in force and to which the United States is a Party by enhancing cooperation in preventing, punishing, and eradicating terrorism. It does so by elaborating for regional use a variety of legal tools that have proven effective against terrorism and transnational organized crime in recent years.

Following the model of the 1999 International Convention for the Suppression of the Financing of Terrorism, the Convention incorporates by reference the offenses set forth in ten counterterrorism instruments listed in paragraph 1 of Article 2 of the Convention. Negotiators chose this approach because of the breadth of converge already provided by these prior instruments (all crimes ordinarily recognized as terrorism-related offenses are covered, including hijackings, bombings, attacks on diplomats, and the financing of terrorism and the OAS’s desire to respond rapidly to the events of September 11 and the continuing threat of terrorism in the region.

All Parties are required under the Convention to “endeavor to become a party” to the ten prior instruments (the United States is already a Party to all of the instruments). In addition to facilitating implementation of the Convention, this obligation also advances implementation of UNSCR 1373, which “calls upon” states to become Parties to these same instruments “as soon as possible.” Thus, we would hope that all Parties to the Convention will have become Parties to those instruments by the time they deposit their instruments of ratification for this Convention.

However, so as not to delay a state from becoming a Party to this Convention, and in order to preserve the prerogatives of the legislative bodies in becoming Parties to the instruments listed in the Convention, the Convention provides that a state may declare that the obligations contained in the Convention do not apply to the offenses set forth in any one of the counterterrorism instruments listed in Article 2 if it is not yet a Party to that instrument or if it ceases to be a Party. This procedure provides a high degree of flexibility for states that are considering becoming Parties to this Convention, without undermining the U.S. interest in having all states become Parties to all of the other international instruments relating to terrorism.

In addition to incorporating the offenses from prior counterterrorism instruments, the Convention adopts elements from prior conventions and initiatives, in some cases expanding the scope of these elements and in other cases converting voluntary measures into legally binding ones. For example, Article 11 of the Convention prohibits Parties from denying extradition or mutual legal assistance requests on the sole ground that an offense covered by the Convention is or concerns a political offense. This provision appears in the more recent counterterrorism instruments and, by incorporating it into the Convention, its scope will be expanded to include offenses set forth in prior conventions and protocols as well.

Another example is the Convention's requirement in paragraph 1 of Article 4 that Parties institute a legal and regulatory regime to prevent, combat, and eradicate the financing of terrorism. A similar requirement can be found in UNSCR 1373, but the Convention goes further by requiring that the regime include specific elements drawn from the forty recommendations of the Financial Action Task Force on Money Laundering (FATF), an inter-governmental body whose purpose is to develop and promote policies to combat money laundering. In fulfillment of one of its requirements, the United States will notify the OAS Secretary General, upon the deposit of its instruments of ratification, the national authority designated to be its financial intelligence unit.

In addition, paragraph 2 of Article 4 of the Convention mandates that, when establishing their legal and regulatory regimes, Parties must use as "guidelines" the recommendations developed by specialized international and regional entities, in particular the FATF and, as appropriate, the Inter-American Drug Abuse Control Commission, the Caribbean Financial Action Task Force, and the South American Financial Action Task Force, which are likewise inter-governmental bodies that develop policies relating to money laundering within their respective areas. Because the recommendations of these entities can change over time, the Convention requires that Parties use the recommendations of FATF, as well as the recommendations of the other entities, as "guidelines" in implementing paragraph 1 of Article 4, rather than requiring that the Parties implement all of those recommendations in full.

Other measures incorporated into the Convention include: expanding the basis for seizure and forfeiture of funds and other assets; expansion of predicate offenses for money laundering; enhancing cooperation on border controls and among law enforcement authorities; establishment of a mechanism for transferring persons in

custody for identification, testimony or other types of assistance; and denial of refugee status in cases where there are serious reasons for considering that the person has committed an offense covered by the Convention.

The Convention facilitates the implementation of many of the mandatory measures called for in UNSCR 1373 by establishing mechanisms for cooperation in the region, and by mandating that Parties take specific, concrete steps that will advance their implementation of the more general measures set forth in that resolution. Those measures include: freezing funds or assets that are used in or form the proceeds of terrorist offenses; measures relating to the denial of refugee or asylum status; affording other Parties the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to terrorist acts; and detecting and preventing the movement of terrorists and terrorist groups by effective border controls and controls on the issuance of travel and identity documents.

Article 10 establishes a procedure whereby persons in custody may be transferred to another party for the purpose of providing assistance in obtaining evidence for the investigation or prosecution of any of the listed offenses. Under this Article, the transfer would take place with the persons' consent and the agreement of the states sending and receiving the person. This provision is found in most modern U.S. mutual legal assistance treaties and in prior conventions relating to terrorism, in particular the 1997 International Convention on the Suppression of Terrorist Bombings and the 1999 International Convention on the Suppression of the Financing of Terrorism. As in those other legal instruments, it is not meant to be the exclusive means of transferring persons in custody but rather creates one possible modality for such transfers. While implicit, it may be useful in the context of the Convention to underscore this point, and I therefore recommend that the following understanding be included in the United States instrument of ratification:

The United States of America understands that, as in other treaties with such provisions, nothing in Article 10 or in this Convention precludes the involuntary transfer of persons pursuant to applicable domestic or international law.

Article 15 confirms that the Convention's implementation will take place with full respect for the rule of law, human rights, and fundamental freedoms. In addition, "international humanitarian law" is included among the other rights and obligations of states and individuals under international law that are not affected by this Convention. In this respect, the term "international humanitarian law" is used in this Convention in the same context as it is used in the 1999 International Convention on the Suppression of the Financing of Terrorism and the 1997 International Convention on the Suppression of Terrorist Bombings. This term is not used by United States armed forces and could be subject to varied interpretations.

As was the case for those two earlier instruments, it is the United States' intention, in the context of this Convention, to inter-

pret the term consistently with our understanding of the term “law of war.” To confirm the U.S. understanding on this point, I recommend that the following understanding to Article 15, paragraph 2, be included in the United States instrument of ratification:

The United States of America understands that the term “international humanitarian law” in paragraph 2 of Article 15 of the Convention has the same substantive meaning as the term “law of war.”

Recent precedents exist for the conclusion of law enforcement-related treaties within the OAS framework. For example, the Inter-American Convention Against Corruption done at Caracas on March 29, 1996, was signed by the United States on June 2, 1996, and that Convention entered into force for the United States on October 29, 2000. The United States also signed the Inter-American Convention on Mutual Assistance in Criminal Matters done at Nassau on May 23, 1992, and a related Optional Protocol done at Managua on June 11, 1993, on January 10, 1995, and that Convention and its Optional Protocol entered into force for the United States on June 24, 2001.

Conclusion

Accompanying this Report is an article-by-article analysis of the Convention.

I believe that this Convention, by enhancing regional cooperation in the fight against terrorism, will enhance the security of the Western Hemisphere and the national security of the United States. I therefore recommend that the Convention be submitted to the Senate for its advice and consent to ratification subject to the understandings described herein at the earliest possible date. The Departments of Justice and Treasury join me in urging rapid ratification of the Convention.

Respectfully submitted,

COLIN L. POWELL.

Enclosure: As stated.

ARTICLE-BY-ARTICLE ANALYSIS OF THE CONVENTION TEXT SUMMARY OF PROVISIONS

The Convention consists of a Preamble and twenty-three articles. Among the substantive articles are three articles on international cooperation against the financing of terrorism, seven articles on other types of international cooperation, three articles relating to denial of safe haven for suspected terrorists, an article on non-discrimination, and an article on protection of human rights.

Object and Purposes: Article 1 defines the purposes of the Convention as the prevention, punishment, and elimination of terrorism. The Parties commit to adopt the necessary measures and to strengthen cooperation among themselves, in accordance with the terms of the Convention.

Applicable International Instruments: The term “offenses” is used in a number of articles (Articles 4, 5, 6, 9, 10, 11, 12, and 13). Under Article 2, the term is defined to mean the offenses described in one or more of the ten international instruments relating to terrorism listed in paragraph 1 of that Article (hereinafter “listed of-

fenses”).¹ Since it was anticipated that not all states would be Party to all ten instruments at the time of becoming Party to the Convention, Article 2 contains a mechanism for a State Party to this Convention that is not a Party to one or more of the listed international instruments to declare that the obligations contained in the Convention do not apply to the offenses set forth in any of the listed instruments if it is not yet a Party to that instrument. These provisions follow the model of the International Convention for the Suppression of Financing of Terrorism done at New York on December 9, 1999 (“Terrorism Financing Convention”).

Domestic Measures: Article 3 calls upon all Parties to “endeavor” to become Parties to all ten of the instruments listed in paragraph 1 of Article 2 and to adopt the necessary measures to implement them effectively. Some delegations proposed during the negotiations to make this provision mandatory but a number of states responded that such an obligation could be read by legislatures as taking away or diminishing their involvement or prerogative in the process of becoming Parties to the ten listed instruments. A similar provision appears in paragraph 3(d) of UN Security Council Resolution 1373 (2001) (“UNSCR 1373”).

Measures To Prevent, Combat, and Eradicate Financing of Terrorism: Article 4 commits each Party, to the extent that it has not already done so, to institute a legal and regulatory regime to prevent, combat, and eradicate the financing of terrorism and for effective international cooperation in that area, which includes:

- A comprehensive domestic regulatory and supervisory regime for banks and other financial institutions and other entities deemed to be susceptible to being used for the financing of terrorist activities;

- Measures to detect and monitor the movement across borders of cash, bearer negotiable instruments, and other appropriate movements of value; and

- Measures to ensure that the competent authorities have the ability to cooperate and exchange information at the national and international levels, including the establishment and maintenance of a financial intelligence unit.

These provisions are similar to provisions in the Terrorism Financing Convention and UNSCR 1373. When establishing and implementing these financial control measures, the Parties agree to use as guidelines the recommendations developed by specialized international and regional entities, in particular the Financial Action Task Force on Money Laundering (FATF) and, as appropriate, other regional entities. However, because the recommendations of these entities can change over time, the requirement is that the Parties use the recommendations of these entities as “guidelines” rather than that the Parties implement all of those recommendations in full.

Seizure and Confiscation of Funds or Other Assets; Predicate Offenses to Money Laundering: Under Article 5, each Party commits,

¹There are 12 UN conventions and protocols on terrorism. Following the practice adopted in the 1999 Terrorism Financing Convention, only 10 of the instruments are listed in this Convention. The 1963 Tokyo Convention on Offenses and Certain Other Acts Committed on Board Aircraft was omitted as being unnecessary in view of the more recent 1970 Hague Convention and 1971 Montreal Convention on terrorism related to aircraft. The 1991 Convention on the Marking of Plastic Explosives was omitted because it does not set forth a criminal offense.

in accordance with the procedures established in its domestic law, to take necessary measures to identify, freeze or seize, and confiscate funds or assets used or intended to be used to finance terrorist acts or the proceeds resulting from, regardless of whether the offenses were committed within or outside the jurisdiction of the State Party. This obligation extends the requirement that such funds be frozen pursuant to UNSCR 1373. Under Article 6 each Party must take the necessary measures to ensure that its domestic penal money laundering legislation includes as predicate offenses the listed offenses, regardless of whether the offenses were committed within or outside the jurisdiction of the State Party.

Cooperation on Border Controls: Article 7 requires that each Party, consistent with its respective domestic legal and administrative regimes, promote cooperation and information exchange in order to improve border and customs control measures to detect and prevent intentional movement of terrorists and trafficking in arms or other materials intended to support terrorist activities. Article 7 also obligates Parties to promote cooperation and information exchange to improve controls on issuance of travel and identity documents and to prevent counterfeiting, forgery or fraudulent use. Article 7 will facilitate implementation of paragraph 2(g) of UNSCR 1373 and takes into account the recommendations of the Subcommittee on Border Controls of the Inter-American Committee Against Terrorism (CICTE) that were adopted while the Convention was under negotiation.

Cooperation Among Law Enforcement Authorities: Under Article 8, the Parties commit to work closely with each other, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement actions to combat the listed offenses. This Article directs Parties to establish and enhance, where necessary, channels of communication to facilitate the secure and rapid exchange of information concerning all aspects of the listed offenses.

Mutual Legal Assistance: Article 9 provides that the Parties commit to afford each other the greatest measure of expeditious mutual legal assistance with respect to the prevention, investigation, and prosecution of the listed offenses and related proceedings in accordance with existing treaties or, in the absence of a treaty, in accordance with domestic law. In terms of existing treaties, the Inter-American Convention on Mutual Assistance in Criminal Matters, done at Nassau on May 23, 1992, entered into force on April 14, 1996, and for the United States, on June 24, 2001, has only seven Parties—the United States, Canada, Ecuador, Grenada, Panama, Peru, and Venezuela. Another ten states have signed that instrument (The Bahamas, Brazil, Chile, Costa Rica, El Salvador, Mexico, Nicaragua, Paraguay, Suriname, and Uruguay).

The United States has bilateral mutual legal assistance treaties in force with sixteen OAS member states: Antigua and Barbuda, Argentina, The Bahamas, Barbados, Brazil, Canada, Dominica, Grenada, Jamaica, Mexico, Panama, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, and Uruguay. In the absence of a treaty, assistance would be provided pursuant to the U.S. judicial assistance statute, 28 U.S.C. 1782.

Transfer of Persons in Custody: Article 10 establishes a procedure whereby persons in custody in the territory of one Party may, with that person's consent and the agreement of both the sending and receiving states, be transferred to another for the purposes of providing assistance in obtaining evidence for the investigation or prosecution of any of the listed offenses. The Article is consistent with Article 13 of the International Convention on the Suppression of Terrorist Bombings, done at New York on December 15, 1997 ("Terrorist Bombings Convention") and Article 16 of the Terrorism Financing Convention. Although such provisions appear in most modern U.S. mutual legal assistance treaties, in the area of multilateral treaties designed to counter terrorism they are a recent innovation, and this Convention enables the mechanism to be applied among the Parties with respect to the offenses established in the eight earlier UN instruments relating to terrorism, in addition to the two most recent conventions referred to above.

As in these other legal instruments, this procedure is not meant to be the exclusive means of transferring persons in custody but rather creates one possible modality for such transfers. While implicit, it is recommended that the following understanding be included in the United States instrument of ratification:

The United States of America understands that, as in other treaties with such provisions, nothing in Article 10 or in this Convention precludes the involuntary transfer of persons pursuant to applicable domestic or international law.

Inapplicability of Political Offense Exception: Article 11 provides that the listed offenses shall not be considered political offenses or offenses connected with a political offense or offenses inspired by political motives, for purposes of extradition or mutual legal assistance. This provision is identical to Article 14 of the Terrorism Financing Convention and Article 11 of the Terrorist Bombings Convention. This provision thus requires that this principle be applied to the offenses established in the UN instruments relating to terrorism that preceded the Terrorist Bombings and Terrorism Financing Conventions.

The specific consequence of the Convention's narrowing of the political offense exception for the listed offenses will vary depending on the age of the relevant bilateral U.S. extradition treaty or mutual legal assistance treaty. Generally, under modern extradition treaties concluded by the United States, the political offense exception is already precluded for all crimes covered under "prosecute or extradite" conventions and protocols relating to terrorism to which the United States and its extradition treaty partner are Parties. Older treaties generally provide fugitives the right to claim political offense but do not expressly narrow the political offense exception by reference to the conventions and protocols relating to terrorism. As between the United States and any other Party to the Convention, the political offense provisions in these older treaties will be narrowed by virtue of Article 12, even in the absence of a provision similar to those in modern extradition treaties narrowing the political offense exception.

Denial of Refugee Status and Denial of Asylum: Article 12 and 13 facilitate implementation of paragraph 3(f) of UNSCR 1373, which calls upon all Member States to “take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum seeker has not planned, facilitated or participated in the commission of terrorist acts.”

Article 12 requires each party to take appropriate measures, consistent with the relevant provisions of national and international law, to ensure that refugee status is not granted to any person about whom there are “serious reasons” for considering that such person has committed a listed offense. Article 13 requires each Party, along similar lines, to ensure that asylum is not granted to any person about whom there are “reasonable grounds” to believe that such person has committed a listed offense. Article 12 tracks the specific wording of Article 1.F. of the Convention relating to the Status of Refugees, done at New York on July 28, 1951, which was incorporated by reference into the Protocol relating to the Status of Refugees, done at New York on January 31, 1967, and which entered into force for the United States on November 1, 1968. Article 1.F. states that “[t]he provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: (a) he has committed a serious non-political crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision with respect of such crimes; (b) he has committed a serious non-political crime outside of the country of refuge prior to his admission to that country as a refugee; and (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.” Article 13 uses different “reasonable grounds” language because of certain differences, particularly in Latin American systems, between refugee and asylum processes.

Non-Discrimination: Article 14 states that nothing in the Convention shall be interpreted as requiring a Party to provide mutual legal assistance if the requested Party has substantial grounds to believe that the request was made for the purpose of prosecuting or punishing a person on account of that person’s race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person’s position for any of these reasons. This language is consistent with Article 15 of the Terrorism Financing Convention and Article 12 of the Terrorist Bombings Convention.

Human Rights: Article 15 is the only article in the Convention that specifically addresses human rights matters. The Article represents a significant compromise between those states, including the United States, that believed that human rights issues were adequately addressed in other instruments and need not be mentioned in a law enforcement instrument, and those states that asserted that the history of human rights abuses in Latin America necessitated a provision addressing human rights concerns.

The first paragraph of Article 15 states that the measures carried out by the Parties under this Convention must take place with

full respect for the rule of law, human rights, and fundamental freedoms.

The second paragraph of Article 15, which states that nothing in this Convention shall be interpreted as affecting other rights and obligations of states and individuals under international law, is consistent with Article 21 of the Terrorism Financing Convention and Article 19 of the Terrorist Bombings Convention. The listing of the sources of the rights and obligations is more comprehensive in the Convention than in the other two instruments at the request of many delegations that sought to have references to specific subsets of international law that they believed were relevant to the Convention. The subsets of international law that were eventually agreed to included international human rights law and international refugee law; international humanitarian law was also included, just as it was in the Terrorism Financing Convention and the Terrorist Bombing Convention.

The term “international humanitarian law” is not used by United States armed forces and can be subject to varied interpretations. It is the United States’ intention, in the context of this Convention, to interpret the term consistently with its understanding of the term “law of war.” To confirm the U.S. understanding on this point, it is recommended that the following understanding to this paragraph be included in the United States instrument of ratification:

The United States of America understands that the term “international humanitarian law” in paragraph 2 of Article 15 of the Convention has the same substantive meaning as the law of war.

The third paragraph of Article 15 refers to persons taken into custody, or regarding whom other measures are taken pursuant to this Convention, and provides that they shall be guaranteed fair treatment. This language is consistent with Article 17 of the Terrorism Financing Convention and Article 14 of the Terrorist Bombings Convention.

Training: Under paragraph 1 of Article 16, the Parties commit to promote technical cooperation and training at all levels and in the framework of the OAS. The United States is already providing training and other forms of assistance to a number of countries in the region and plans to encourage and facilitate such cooperation through CICTE. However, because U.S. provision of training and assistance is subject to the availability of funds, U.S. negotiators were careful to limit the legal obligation in Article 16 to the promotion of training and assistance.

Because negotiators recognized the global nature of the terrorist threat and the global response to that threat, paragraph 2 of Article 16 directs the parties to promote, where appropriate, technical cooperation and training programs with other regional and international organizations. This provision is designed to avoid duplication of effort and to ensure that limited resources are used most effectively.

Cooperation Through the OAS: Article 17 represents a compromise between those delegations that wanted no reference to CICTE at all in the Convention and those states that wanted CICTE to be established as the follow-up mechanism for the imple-

mentation of the Convention. The United States recognized the important role that CICTE could play in the implementation of the Convention and firmly supports its work. However, the United States was not prepared to establish CICTE as the permanent implementing body for the Convention due to financial and other concerns. In order to maintain maximum flexibility during implementation, Article 17 requires only that Parties “encourage” the broadest cooperation within the pertinent OAS bodies organs, including CICTE, on matters related to the object and purpose of the Convention.

Consultation Among the Parties: Article 18 requires the parties to hold periodic meetings, as appropriate, with a view to facilitating full implementation of the Convention and the exchange of information and experiences on preventing, detecting, investigating, and punishing terrorism. It states that the OAS Secretary General shall convene a meeting of consultation after the tenth state becomes a Party to the Convention, and further states that the Parties may request the OAS, including CICTE, to facilitate the consultation and to provide other forms of assistance concerning the implementation of the Convention.

Exercise of Jurisdiction: Article 19 states that nothing in this Convention entitles a Party to undertake, in the territory of another Party, the exercise of its jurisdiction or the performance of functions that are exclusively reserved to the authorities of the other state by its domestic law. This Article is similar to Article 22 of the Terrorism Financing Convention and Article 18 of the Terrorist Bombings Convention.

Final Clauses: Articles 20–23 contain the final clauses. The OAS shall serve as depositary for the Convention. Only OAS member states may become Parties to the Convention. The Convention will enter into force on the thirtieth day following the date of deposit of the sixth instrument of ratification. A Party may denounce the convention by written notification to the Secretary General of the OAS. Denunciation would take effect one year following the date the notification is received by the Secretary General. Requests for information or assistance made while the convention is in force for that denouncing state will not be affected by the denunciation.

CONVENCIÓN INTERAMERICANA CONTRA EL TERRORISMO

INTER-AMERICAN CONVENTION AGAINST TERRORISM

CONVENÇÃO INTERAMERICANA CONTRA O TERRORISMO

CONVENTION INTERAMÉRICAINÉ CONTRE LE TERRORISME

INTER-AMERICAN CONVENTION AGAINST TERRORISM

THE STATES PARTIES TO THIS CONVENTION,

BEARING IN MIND the purposes and principles of the Charter of the Organization of American States and the Charter of the United Nations;

CONSIDERING that terrorism represents a serious threat to democratic values and to international peace and security and is a cause of profound concern to all member states;

REAFFIRMING the need to adopt effective steps in the inter-American system to prevent, punish, and eliminate terrorism through the broadest cooperation;

RECOGNIZING that the serious economic harm to states which may result from terrorist acts is one of the factors that underscore the need for cooperation and the urgency of efforts to eradicate terrorism;

REAFFIRMING the commitment of the states to prevent, combat, punish, and eliminate terrorism; and

BEARING IN MIND resolution RC.23/RES. 1/01 rev. 1 corr. 1, "Strengthening Hemispheric Cooperation to Prevent, Combat, and Eliminate Terrorism," adopted at the Twenty-third Meeting of Consultation of Ministers of Foreign Affairs,

HAVE AGREED TO THE FOLLOWING:

Article 1 Object and purposes

The purposes of this Convention are to prevent, punish, and eliminate terrorism. To that end, the states parties agree to adopt the necessary measures and to strengthen cooperation among them, in accordance with the terms of this Convention.

Article 2 Applicable international instruments

1. For the purposes of this Convention, "offenses" means the offenses established in the international instruments listed below:

- a. Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970.
- b. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971.
- c. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973.

- d. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979.
- e. Convention on the Physical Protection of Nuclear Material, signed at Vienna on March 3, 1980.
- f. Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on February 24, 1988.
- g. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 10, 1988.
- h. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on March 10, 1988.
- i. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997.
- j. International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on December 9, 1999.

2. Upon depositing its instrument of ratification to this Convention, a state party that is not a party to one or more of the international instruments listed in paragraph 1 of this article may declare that, in application of this Convention to such state party, that particular instrument shall be deemed not to be included in that paragraph. The declaration shall cease to have effect as soon as that instrument enters into force for that state party, which shall notify the depositary of this fact.

3. When a state party ceases to be a party to one of the international instruments listed in paragraph 1 of this article, it may make a declaration, as provided in paragraph 2 of this article, with respect to that instrument.

Article 3 Domestic measures

Each state party, in accordance with the provisions of its constitution, shall endeavor to become a party to the international instruments listed in Article 2 to which it is not yet a party and to adopt the necessary measures to effectively implement such instruments, including establishing, in its domestic legislation, penalties for the offenses described therein.

Article 4 Measures to prevent, combat, and eradicate the financing of terrorism

1. Each state party, to the extent it has not already done so, shall institute a legal and regulatory regime to prevent, combat, and eradicate the financing of terrorism and for effective international cooperation with respect thereto, which shall include:

- a. A comprehensive domestic regulatory and supervisory regime for banks, other financial institutions, and other entities deemed particularly susceptible to being used for the financing of terrorist activities. This regime shall emphasize requirements for customer identification, record-keeping, and the reporting of suspicious or unusual transactions.
- b. Measures to detect and monitor movements across borders of cash, bearer negotiable instruments, and other appropriate movements of value. These measures shall be subject to safeguards to ensure proper use of information and should not impede legitimate capital movements.
- c. Measures to ensure that the competent authorities dedicated to combating the offenses established in the international instruments listed in Article 2 have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed under its domestic law. To that end, each state party shall establish and maintain a financial intelligence unit to serve as a national center for the collection, analysis, and dissemination of pertinent money laundering and terrorist financing information. Each state party shall inform the Secretary General of the Organization of American States of the authority designated to be its financial intelligence unit.

2. When implementing paragraph 1 of this article, states parties shall use as guidelines the recommendations developed by specialized international and regional entities, in particular the Financial Action Task Force and, as appropriate, the Inter-American Drug Abuse Control Commission, the Caribbean Financial Action Task Force, and the South American Financial Action Task Force.

Article 5

Seizure and confiscation of funds or other assets

1. Each state party shall, in accordance with the procedures established in its domestic law, take such measures as may be necessary to provide for the identification, freezing or seizure for the purposes of possible forfeiture, and confiscation or forfeiture, of any funds or other assets constituting the proceeds of, used to facilitate, or used or intended to finance, the commission of any of the offenses established in the international instruments listed in Article 2 of this Convention.
2. The measures referred to in paragraph 1 shall apply to offenses committed both within and outside the jurisdiction of the state party.

Article 6

Predicate offenses to money laundering

1. Each state party shall take the necessary measures to ensure that its domestic penal money laundering legislation also includes as predicate offenses those offenses established in the international instruments listed in Article 2 of this Convention.
2. The money laundering predicate offenses referred to in paragraph 1 shall include those committed both within and outside the jurisdiction of the state party.

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Article 7

Cooperation on border controls

1. The states parties, consistent with their respective domestic legal and administrative regimes, shall promote cooperation and the exchange of information in order to improve border and customs control measures to detect and prevent the international movement of terrorists and trafficking in arms or other materials intended to support terrorist activities.

2. In this context, they shall promote cooperation and the exchange of information to improve their controls on the issuance of travel and identity documents and to prevent their counterfeiting, forgery, or fraudulent use.

3. Such measures shall be carried out without prejudice to applicable international commitments in relation to the free movement of people and the facilitation of commerce.

Article 8

Cooperation among law enforcement authorities

The states parties shall work closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offenses established in the international instruments listed in Article 2. In this context, they shall establish and enhance, where necessary, channels of communication between their competent authorities in order to facilitate the secure and rapid exchange of information concerning all aspects of the offenses established in the international instruments listed in Article 2 of this Convention.

Article 9

Mutual legal assistance

The states parties shall afford one another the greatest measure of expeditious mutual legal assistance with respect to the prevention, investigation, and prosecution of the offenses established in the international instruments listed in Article 2 and proceedings related thereto, in accordance with applicable international agreements in force. In the absence of such agreements, states parties shall afford one another expeditious assistance in accordance with their domestic law.

Article 10

Transfer of persons in custody

1. A person who is being detained or is serving a sentence in the territory of one state party and whose presence in another state party is requested for purposes of identification, testimony, or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offenses established in the international instruments listed in Article 2 may be transferred if the following conditions are met:

- a. The person freely gives his or her informed consent; and

- b. Both states agree, subject to such conditions as those states may deem appropriate.

2. For the purposes of this article:

- a. The state to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the state from which the person was transferred.
- b. The state to which the person is transferred shall without delay implement its obligation to return the person to the custody of the state from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both states.
- c. The state to which the person is transferred shall not require the state from which the person was transferred to initiate extradition proceedings for the return of the person.
- d. The person transferred shall receive, for time spent in the custody of the state to which he or she was transferred, credit toward service of the sentence being served in the state from which he or she was transferred.

3. Unless the state party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the state to which that person is transferred in respect of acts or convictions prior to his or her departure from the territory of the state from which said person was transferred.

Article 11

Inapplicability of political offense exception

For the purposes of extradition or mutual legal assistance, none of the offenses established in the international instruments listed in Article 2 shall be regarded as a political offense or an offense connected with a political offense or an offense inspired by political motives. Accordingly, a request for extradition or mutual legal assistance may not be refused on the sole ground that it concerns a political offense or an offense connected with a political offense or an offense inspired by political motives.

Article 12

Denial of refugee status

Each state party shall take appropriate measures, consistent with the relevant provisions of national and international law, for the purpose of ensuring that refugee status is not granted to any person in respect of whom there are serious reasons for considering that he or she has committed an offense established in the international instruments listed in Article 2 of this Convention.

Article 13
Denial of asylum

Each state party shall take appropriate measures, consistent with the relevant provisions of national and international law, for the purpose of ensuring that asylum is not granted to any person in respect of whom there are reasonable grounds to believe that he or she has committed an offense established in the international instruments listed in Article 2 of this Convention.

Article 14
Nondiscrimination

None of the provisions of this Convention shall be interpreted as imposing an obligation to provide mutual legal assistance if the requested state party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, or political opinion, or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 15
Human rights

1. The measures carried out by the states parties under this Convention shall take place with full respect for the rule of law, human rights, and fundamental freedoms.

2. Nothing in this Convention shall be interpreted as affecting other rights and obligations of states and individuals under international law, in particular the Charter of the United Nations, the Charter of the Organization of American States, international humanitarian law, international human rights law, and international refugee law.

3. Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including the enjoyment of all rights and guarantees in conformity with the law of the state in the territory of which that person is present and applicable provisions of international law.

Article 16
Training

1. The states parties shall promote technical cooperation and training programs at the national, bilateral, subregional, and regional levels and in the framework of the Organization of American States to strengthen the national institutions responsible for compliance with the obligations assumed under this Convention.

2. The states parties shall also promote, where appropriate, technical cooperation and training programs with other regional and international organizations conducting activities related to the purposes of this Convention.

Article 17

Cooperation through the Organization of American States

The states parties shall encourage the broadest cooperation within the pertinent organs of the Organization of American States, including the Inter-American Committee against Terrorism (CICTE), on matters related to the object and purposes of this Convention.

Article 18

Consultations among the parties

1. The states parties shall hold periodic meetings of consultation, as appropriate, with a view to facilitating:

- a. The full implementation of this Convention, including the consideration of issues of interest relating thereto identified by the states parties; and
- b. The exchange of information and experiences on effective means and methods to prevent, detect, investigate, and punish terrorism.

2. The Secretary General shall convene a meeting of consultation of the states parties after receiving the 10th instrument of ratification. Without prejudice to this, the states parties may hold consultations as they consider appropriate.

3. The states parties may request the pertinent organs of the Organization of American States, including CICTE, to facilitate the consultations referred to in the previous paragraphs and to provide other forms of assistance with respect to the implementation of this Convention.

Article 19

Exercise of jurisdiction

Nothing in this Convention entitles a state party to undertake in the territory of another state party the exercise of jurisdiction or performance of functions that are exclusively reserved to the authorities of that other state party by its domestic law.

Article 20

Depositary

The original instrument of this Convention, the English, French, Portuguese, and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States.

Article 21

Signature and ratification

1. This Convention is open for signature by all member states of the Organization of American States.

2. This Convention is subject to ratification by the signatory states in accordance with their respective constitutional procedures. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

Article 22
Entry into force

1. This Convention shall enter into force on the 30th day following the date of deposit of the sixth instrument of ratification of the Convention with the General Secretariat of the Organization of American States.

2. For each state ratifying the Convention after deposit of the sixth instrument of ratification, the Convention shall enter into force on the 30th day following the deposit by such state of its instrument of ratification.

Article 23
Denunciation

1. Any state party may denounce this Convention by written notification to the Secretary General of the Organization of American States. Denunciation shall take effect one year following the date on which notification is received by the Secretary General of the Organization.

2. Such denunciation shall not affect any requests for information or assistance made during the time the Convention is in force for the denouncing state.